



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified and provided documentary evidence that the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 5, 2021, in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony and documentary evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord seeks to amend their Application for Dispute Resolution to include the non-payment of rent for the months of November 2021, December 2021, January 2022, and

February 2022. As this fits the requirements for Rule 4.2, I allow the amendment and increase the landlord's claim to include rent for these months, in the amount of 6400.00 for a total claim of \$11,977.10.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 28, 2021 for a 1 year and 2 day fixed-term tenancy beginning on April 28, 2021 for a monthly rent of \$1,600.00 due on the first of each month with a security deposit of \$800.00 paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 7, 2021 with an effective vacancy date of October 17, 2021 citing the tenant had failed to pay rent in the amount of \$4,800.00 and utilities in the amount of \$477.16 after a demand letter of September 9, 2021.
- Hydro bills for the periods of May 5 to July 5 2021 and July 6 to September 2, 2021 totalling \$477.16

The landlord confirmed in her documentary evidence that the Notice to End Tenancy was served to the tenant on October 17, 2021 at 11:40 a.m. and that this service was witnessed by a third party.

The landlord seeks compensation for the non-payment of rent from August 1, 2021 up to and including the month of February 2022, in the amount of \$11,200.00. The landlord also seeks compensation for unpaid hydro utility bills totalling \$447.16. In addition the landlord seeks \$300.00 related to strata fees and fines that the tenant is responsible for.

Analysis

Section 46 allows a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 46, subsection 6 states, that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

While there is no term in the tenancy agreement that requires the tenant to pay the landlord any utility charges, I cannot consider the unpaid utilities as unpaid rent, pursuant to Section 46(6). However, I am satisfied, by the landlord's undisputed testimony and evidence, that on the day the landlord issued the Notice to End Tenancy the tenant owed at least three month's rent.

I am also satisfied by the landlord's undisputed testimony and evidence the tenant has failed to pay rent in the amount of \$11,200.00 or utilities in the amount of \$477.16, as of the date of this hearing. While I could not consider the non-payment of utilities as unpaid rent for the purposes of the issuance of the Notice to End Tenancy, I can consider it as unpaid utilities for the purposes of the landlord's monetary claim.

In regard to the landlord's claim for a move in fee and strata fine, I cannot consider that claim as part of this application, as the application clearly outlined the landlord was seeking only unpaid rent and utilities. I dismiss this portion of the landlord's claim, in the amount of \$300.00, with leave to reapply under a future and separate application, subject only to any time restrictions set forth in the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$11,777.16** comprised of \$11,200.00 rent owed; \$477.16 in utilities owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2022

Residential Tenancy Branch